

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERT VASQUEZ,

Plaintiff,

v.

Civ. No. 22-522 MIS/SCY

NEW MEXICO DEPARTMENT OF
CORRECTIONS et al.,

Defendants.

ORDER GRANTING STAY

This matter is before the Court on Plaintiff counsel's "Expedited Motion To Stay Briefing And Proceedings On Enforcement Of Court's Order [Doc. 125] Pending Resolution Of Motion To Reconsider And To Stay Enforcement Of Order Pending Case Resolution/Appeal In The Alternative," filed December 10, 2024. Doc. 129.

This matter arose with Defendants' Motion For Attorneys' Fees (Doc. 90) and Defendants' Second Motion For Attorneys' Fees (Doc. 113). In Plaintiff's counsel's opposition to these motions, she claimed that she was unable to pay sanctions because of her personal financial situation. Doc. 121 at 21 ("Ms. Ayala asks that the Court read her Affidavit, ¶¶1-12 submitted under seal for in camera review . . ."). Despite requesting the Court to read her affidavit, however, Plaintiff's counsel submitted no affidavit. On October 9, the Court issued an order calling this deficiency to Plaintiff's counsel's attention. Doc. 124. The Court noted the lack of an affidavit and ordered:

IT IS HEREBY ORDERED THAT by October 16, 2024 Plaintiff's counsel may file her affidavit and all other supporting exhibits she wishes the Court to consider ex parte under seal. Failure to provide supporting documentation by this deadline will result in the Court declining to consider ability to pay when ruling on the sanctions motions.

Doc. 124 at 2. Plaintiff's counsel failed to file an affidavit by this deadline. Still having received no affidavit as of November 4, I granted Defendants' motions for sanctions in part, ordering: "Plaintiff's counsel shall pay the sum of \$13,614.35 to Defendants within 30 days of the date of this order, absent a request for a reasonable extension of time." Doc. 125 at 11. That is, the Court's November 4, 2024 Order set a deadline of December 4, 2024 for Plaintiff to pay the ordered sanction, absent a request, filed before December 4, 2024, for a reasonable extension of time to pay the sanction.

On November 28, approximately six weeks after it was due, Plaintiff's counsel filed her missing affidavit. Doc. 126. Two days later, on November 30, Plaintiff's counsel filed a motion for reconsideration of the sanctions order, stating that she did not see the Court's sanctions order until Defendants' counsel emailed her on November 25. Doc. 127 at 2. Another week and a half later, on December 10, the present emergency motion for a stay followed. In this emergency motion, Plaintiff's counsel asks for a stay of the sanctions order. Plaintiff's counsel explains that Defendants' counsel emailed her on December 9, stating that Defendants will "file a motion for an order to show cause pertaining to your continued defiance of the Court's Order [Doc. 125] if you do not pay the fees by December 13, 2024." Doc. 129 at 2.

Plaintiff's counsel asserts in the emergency motion that she cannot, and so will not, pay the sanctions by December 13. The Court acknowledges that Defendants have not had an opportunity to respond to Plaintiff's emergency motion. Normally, the Court would not grant a motion without giving the other side an opportunity to respond. However, the Court will assume Defendants' opposition but nonetheless grant Plaintiff's emergency motion to stay her sanctions payment deadline. The Court makes this decision primarily because a refusal to stay the fees deadline, for all practical purposes, would result in an automatic denial of the motion to

reconsider. To provide the Court an opportunity to consider the motion to reconsider on the merits, it will grant Plaintiff's emergency motion to stay the deadline for her to pay the ordered sanctions. The Court will address any future deadline at the same time it decides Plaintiff's pending motion to reconsider.

THEREFORE, IT IS ORDERED THAT the deadline for Plaintiff's counsel to pay the fees ordered in Doc. 125 is stayed pending the Court's decision on Plaintiff's November 30 Motion to Reconsider.

SO ORDERED.


STEVEN C. YARBROUGH
UNITED STATES MAGISTRATE JUDGE